

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

RSA No. 227 of 1996

Date of decision 27.7.2007

State of H.P.

Appellant

Versus

Jai Ram

Respondent

Coram:

The Hon'ble Mr.Justice Rajiv Sharma, Judge.

Whether approved for reporting?¹ No.

For the Appellant: Mr.M.S.Chandel, Advocate General, with
 Mr.M.A.Khan and Mrs.Meenakshi Sharma,
 Deputy Advocate, Generals.

For the Respondent: Nemo

Rajiv Sharma, J.

A challenge has been laid by way of this regular second appeal to the judgment and decree passed by the learned District Judge, Bilaspur dated 29.2.1996 in Civil Appeal No.75 of 1989.

The brief facts necessary for the adjudication of the second appeal are that the respondent hereinafter referred to as the plaintiff for convenience sake had filed a civil suit for declaration and permanent injunction. The plaintiff had pleaded the possession over the suit land since 15.10.1952 and he had further averred that he had constructed a house and raised a small orchard and made the land cultivable. It has been further asserted by the plaintiff that he was enjoying the possession over the suit land continuously, openly and without any interruption. The appellant-

¹ Whether reporter of local papers are allowed to see the judgment ? No.

defendant hereinafter referred to as the defendant had contested the suit. The defendant had contended that the possession of the plaintiff was unlawful. The trial court on the basis of the pleadings of the parties had framed the following issues:

1. Whether the plaintiff has become owner in possession over the suit land by virtue of adverse possession as alleged? OPP
2. If issue No.1 is proved in affirmative, whether the defendant is interfering over the suit land as alleged? OPP
3. Whether no legal notice has been served upon the defendant as alleged ?OPD
4. Whether this court has no jurisdiction as alleged? OPD
5. Whether the suit is not maintainable as alleged? OPD
6. Whether the suit is bad for non joinder of necessary parties as alleged? OPD
7. Relief.

The trial court had given the following findings on the aforesaid issues:

Issue No.1 Yes

Issue No.2 Yes

Issue No.3 No

Issue No.4 No

Issue No.5 No

Relief The suit is decreed as per operative portion of the judgment.

The trial court on the basis of the pleadings of the parties and the evidence led by them had decreed the suit of the plaintiff on 30.8.1989.

The defendant feeling aggrieved by the judgment and decree passed by the trial Court had preferred an appeal before the learned District Judge, Bilaspur. The learned District Judge had framed the following points for determination:-

1. Whether the respondent/plaintiff has become owner of the suit land by way of adverse possession as alleged?
2. Whether the defendant/appellant is entitled to get back the possession of the suit land?
3. Relief in appeal.

The learned District Judge had recorded the following findings on the aforesaid points:

Point No.1 Yes

Point No.2 No

Relief in appeal Appeal dismissed vide operative portion of the judgment.

The learned District Judge had dismissed the appeal on 29.2.1996.

This second appeal was admitted on 25.7.1997 on the question “Whether the tenancy rights ultimately maturing into ownership stood extinguished by virtue of Section 104(as amended) of the H.P. Tenancy and Land Reforms Act,1972.? However it was made clear by this Court at the time of admission that it will be open to the State counsel to urge other points also. The learned Advocate General besides the question of law framed by the court was permitted to advance his arguments on other points also.

I have heard the learned counsel for the parties and have also gone through the record of the case.

The plaintiff while appearing as PW-1 had testified that he was in possession of the suit land since 1955-56 continuously and without any interruption. He had further testified that the house had been constructed by his father on the land. PW-2 Pungru Ram had supported the version of the plaintiff. The plaintiff had placed on record the copy of jamabandi for the year 1955-56 i.e. Ex.PA, copy of jamabandi for the year 1982-83 Ex.PB,

copy of Khasra Girdwari Ex.PC and copy of notice Ex.PD. The defendant had produced one Bohra Ram, Patwari, Patwar Circle, Gharan. He had stated that the possession of the plaintiff over the suit land was unlawful. While going through the jamabandi Ex.PA for the year 1955-56 it is clear that the plaintiff's father was shown in possession over the suit land as non occupancy tenant and in the column of rent it has been shown without rent and possession has been shown in lieu of encroachment. In the jamabandi Ex.PB the plaintiff had been shown in the column of possession being encroacher and the defendant has been shown in the column of ownership. The defendant had admitted the possession of the plaintiff over the suit land for more than 30 years.

The plaintiff had proved the ingredients of adverse possession i.e. continuous, un-interrupted, open and hostile possession before both the courts below. The appellate court after scrutinizing of the evidence has upheld the judgment and decree passed by the learned trial court.

As far as the question framed by the court on 25.7.1997 is concerned, no arguments were advanced and rightly so since this question was not raised before both the courts below. The contention of the learned Advocate General that the plaintiff had failed to prove the ingredients of adverse possession is untenable in view of the detailed discussion made herein above.

For the foregoing reasons, there is no merit in this appeal, especially when no question of law much less a substantial question of law arises for determination in this appeal. Hence the present appeal is dismissed.

August 6 ,2007(g)

(Rajiv Sharma), J.